

**NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.**

**The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.**

## FISCAL IMPACT REPORT

SPONSOR: Park DATE TYPED: 02/13/02 HB 42

SHORT TITLE: Mandatory Life Imprisonment SB \_\_\_\_\_

ANALYST: Fox-Young

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			\$0.1 Unknown		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

Responses Received From  
 Administrative Office of the Courts (AOC)  
 Corrections Department (CD)  
 Attorney General (AG)  
 Administrative Office of the District Attorneys (AODA)  
 Department of Public Safety (DPS)  
 Public Defender Department (PDD)

### SUMMARY

#### Synopsis of Bill

House Bill 42 amends Section 31-18-23, the Criminal Sentencing Act, **eliminating the possibility of parole for a third violent felony conviction**, where each violent felony was a separate transaction or occurrence, and at least the third violent felony conviction is in New Mexico.

The bill amends Section 31-18-25, **eliminating the possibility of parole for a defendant convicted of a second violent sexual offense**, where each violent sexual offense was a separate transaction or occurrence, and at least the second violent sexual offense conviction is in New Mexico. The language of subsection B of this Section, regarding a second violent sexual offense conviction on a child victim of less than thirteen years of age, becomes superfluous and is removed.

The bill amends Section 31-21-10, Parole Authority and Procedure, eliminating language allowing a convicted capital felony offender or a convicted two- or three-time violent sexual offender to become eligible for parole after serving thirty years of his sentence. The parole board's discretion in granting parole to an inmate convicted of any of the above-named offenses is removed and replaced with language indicating that an inmate convicted and sentenced to life under these circumstances "is not eligible for parole and shall remain incarcerated for the entirety of his natural life."

The term "corrections facility" is changed to "an institution."

The bill repeals Section 31-18-14.1, which reads:

**Capital felony case heard by a jury; sentencing hearing; explanation by court to the jury.**

At the beginning of a sentencing hearing for a capital felony case, subsequent to a verdict by the jury that the defendant is guilty of a capital felony, the court shall explain to the jury that a sentence of life imprisonment means that the defendant shall serve thirty years of his sentence before he becomes eligible for a parole hearing, as provided in Section 31-21-10 NMSA 1978.

Significant Issues

The Attorney General (AG) notes that legislative findings and purposes may be helpful in defending the law against any constitutional challenge. AG reports that the constitutionality of California's three-strike law is currently pending in the United States Supreme Court, Andrade v. California, 270 F.3d 743 (9<sup>th</sup> Cir. 2001), cert. granted and pending, 122 S.Ct. 1434 (2002).

**FISCAL IMPLICATIONS**

The bill may effect an increase in costs for the Corrections Department (CD) due to the requirement due to the requirement that the department house a significant number of offenders for the remainder of their natural lives. CD notes that it is more expensive to house offenders nearing the ends of their lives, as their medical costs tend to increase substantially.

CD forecasts the bill will likely act as a deterrent for a small percentage of inmates who already have convictions for two qualifying violent felonies and know that a third will automatically result in a sentence for the remainder of their natural life. CD indicates that such inmates will be deterred from committing certain crimes in prison such as aggravated battery upon a correctional officer and escape. Similarly, CD indicates that the bill will likely act as a deterrent for a small percentage of inmates who already have convictions for one qualifying violent sexual offense and know that a second will automatically result in a life sentence. CD predicts these inmates will be deterred from committing certain crimes in prison such as criminal sexual penetration of another inmate.

The Administrative Office of the District Attorneys (AODA) notes that the enumerated offenses that act as qualifications of a violent felony conviction or violent sexual offense are so limited that very few cases will be eligible. AODA reports that defendants with multiple prior felony convictions currently have their sentences enhanced by the Habitual Offender Act. The department indicates that if it is determined that a defendant qualifies for a mandatory life sentence without parole, those qualifications will be hotly contested and expensive to litigate.

**OTHER SUBSTANTIVE ISSUES**

AODA notes that there ought to be a companion bill, providing that First Degree Murder also be punished by a “true life sentence.” Otherwise, AODA indicates, the sentencing provisions in this bill will be incongruent with the current sentencing authority for First Degree Murder. AODA further indicates that repeal of Section 31-18-14.1 (advising death penalty jurors that a life sentence means the possibility of parole in thirty years) may have constitutional implications. If the penalty for First Degree Murder is not amended, persons convicted under this statute may make a proportionality argument.

**JCF/prr**